Rainbow Reproductions, Inc. d/b/a Central Apex Reproductions *and* Teamsters Local Union No. 610, affiliated with International Brotherhood of Teamsters, AFL–CIO. Case 14–CA–25217

March 31, 2000

ORDER GRANTING MOTION IN PART AND DENYING MOTION IN PART

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

On February 26, 1999, the Board issued a Decision and Order in this case granting the General Counsel's Motion for Summary Judgment and holding that the document the Respondent filed on November 12, 1998 did not constitute a proper answer to the complaint.[1] The Board's Decision had two underlying rationales: (1) the November 12, 1998 document itself was not styled as an answer to the complaint and, due to the absence of a response to the Notice to Show Cause, there was no contention by the Respondent that the November 12, 1998 document constituted an answer to the complaint; (2) the November 12, 1998 document "fails to address the substance of the complaint allegations and therefore is legally insufficient under the Board's rules," citing *Triple H Fire Protection*, 326 NLRB 463 (1998); *Breeden Painting Co.,* 314 NLRB 870 (1994).

Thereafter, on March 15, 1999,[2] the Respondent filed with the Board a motion for reconsideration of the Board's Decision and Order. The Respondent asserts that, contrary to the Board's finding, the Respondent did, in fact, file a response to the Notice to Show Cause with the Board on or before the February 2, 1999 deadline for such filing. The Respondent contends that inasmuch as the Board's Decision incorrectly states that the Respondent did not file a response and because the Board apparently did not consider the response, the Board should withdraw its Decision and reconsider the General Counsel's Motion for Summary Judgment in light of the response.

The Board has delegated its authority in this proceeding to a three-member panel.

As noted above, the Respondent's response to the Notice to Show Cause was due by February 2. As of the issuance of the Board's decision on February 26, no response to the Notice to Show Cause had been filed with the Board's Office of Executive Secretary, and the Board was otherwise unaware of any document filed by the Respondent in response to the notice or the General Counsel's Motion for Summary Judgment. The Respondent's motion for reconsideration, however, demonstrates that on or before February 2 the Respondent filed with the Board's Division of Judges in Washington, D.C., a document titled "Rainbow's Compliance With Order To Show Cause."

Initially, we note that the Notice to Show Cause specifically required that any response be "filed with the *Board* in Washington, D.C. . . ." [Emphasis added.] Although the Respondent's response was improperly filed, we shall nonetheless grant its motion for reconsideration insofar as it requests that the Board consider its response to the Notice to Show Cause.

In its response, the Respondent argues that the document it filed on November 12, 1998, was intended to be its answer to the complaint. In view of this argument, we have decided to modify our initial decision and to no longer rely on the first rationale set forth above.

Contrary to our dissenting colleague, however, we see nothing in the response that calls into question the validity of the Board's second rationale for granting the General Counsel's Motion for Summary Judgment. Thus, the Respondent is still relying on the same November 12 document that the Board specifically found not to be a proper answer to the complaint under Section 102.20 of the Board's Rules and the *Triple H* and cases. Furthermore, in *Eckert Fire Protection Co.*, 329 NLRB 920 (1999), which issued after the Board's decision in the instant case, a majority of the full Board reaffirmed that, under established precedent, including *Triple H* and *Breeden Painting*, a respondent's answer does not comply with Section 102.20 of the Board's rules where, as here, "it fails to address any of the factual or legal allegations of the complaint."[3]

The Respondent also argues that after it was advised by the General Counsel that its answer was deficient, it did not file an amended answer by the December 30, 1998 extended due date because of "urgent business crises at Rainbow which occupied the time and attention of

[1] 327 NLRB No. 140 (not reported in Board volume).
The text of the November 12, 1998 document is as follows:

ANSWER

COMES NOW, Rainbow Reproductions Inc., (hereinafter "Rainbow") by counsel, and makes answer to Motion to set aside as follows:

(1) Rainbow admits that the Settlement Agreement attached was executed on or about July 14, 1998, and further states that he contents of the instrument speak for itself.

(2) Each allegation of fact not herein above specifically admitted, is specifically and categorically denied, and strict proof required thereof.

(3) [Sic] Further, answering, affirmatively, Rainbow states that prosecution is barred under the doctrines of equitable, judicial and promissory estoppel, waiver, prosecutorial misconduct, unclean hands.

(4) [Sic] Rainbow states that Movant's Motion fail [sic] to state ground upon which rescission may be granted, and has in fact fully ratified and confirmed the terms and elected a remedy inconsistent with rescission.

WHEREFORE, having fully answered, Rainbow prays the matter be dismissed with prejudice and for such other and further relief as may in the premises be proper.

[2] All subsequent dates are in 1999, unless stated otherwise.

[3] Our dissenting colleague's opinion repeats arguments that he advanced, and the Board majority answered, in *Eckert Fire*. We see no need to respond to them again here.

answerer and its sole owner." It is well established, however, that an attorney's unusually heavy workload and the preoccupation of a respondent's owner with other aspects of the business do not constitute good cause for the failure to file a timely and proper answer. See *Carmody, Inc.*, 327 NLRB 1230, 1231 fn. 7 (1999).[4]

Accordingly, for all these reasons, we deny the Respondent's motion for reconsideration insofar as it requests that our prior Decision and Order be withdrawn.

IT IS HEREBY ORDERED that the Respondent's motion for reconsideration is granted insofar as it seeks consideration of the Respondent's response, but denied insofar as it requests that the Board's Decision and Order be withdrawn.

IT IS FURTHER ORDERED that the Board's Decision and Order is modified at footnote 2 to reflect that the Respondent did file a response to the Notice to Show Cause contending that the November 12 document constituted an answer to the complaint.

MEMBER HURTGEN, dissenting.

In the Board's decision reported at 327 NLRB 1230 (1999), I agreed that the Respondent's response of November 12, 1998, was not intended to be an answer. In this regard, the decision considered the November 12 document to be only a response to the General Counsel's motion to set aside the settlement in Case 14–CA–24958. Indeed, as shown by footnote 2, the Board did not understand the Respondent to be asserting that the November 12 document was an answer to the complaint in the instant case.

It is now clear, through the Respondent's motion for reconsideration, that the Respondent *did* intend its November 12 document to be a response to the complaint allegations in the instant case. In light of that fact, I now consider whether it is a valid answer to those allegations. I conclude that it is.

The Respondent's November 12 document stated, inter alia, that each of the relevant factual allegations made by the General Counsel was "specifically and categorically denied, and strict proof required thereof." In my view, this was a clear and specific denial of the complaint allegations. As indicated in my joint dissent with Member Brame in *Eckert Fire Protection*, supra, it is not unusual for a respondent, represented by able counsel, to file an answer that simply says "denied" with respect to individual paragraphs of a complaint. Such answers are routinely accepted. Thus, if the Respondent had said "denied" with respect to each paragraph of the instant complaint, that would have been acceptable. Indeed, my colleagues concede this point. The instant response says (one time) that it "specifically and categorically" denies each and every relevant factual allegation. In my view, to draw a distinction between these two situations is to elevate form over substance. See also my dissent in *Triple H Fire Protection Co.,* 326 NLRB 463 (1998).

I also note that there is no allegation or evidence that the Respondent has acted in bad faith or for a dilatory purpose.

In light of the fact that Respondent "specifically and categorically" denied each and every factual allegation, I do not agree with my colleagues that "Respondent's answer fails to specifically deny any of the complaint allegations." Respondent's clear denials are fully in accord with Section 102.20 of the Rules and are quite consistent with the rationale for that Rule, as set forth in *Pipeline Construction Workers Local 692 (Fulghaum Construction Corp.),* 248 NLRB 1315, 1316 (1980).

My colleagues say that Respondent did not timely file an amendment to its November 12 response, even after being apprised that it was deficient as an answer. It is true that *the Region* told Respondent that, in its view, the November 12 response was deficient as an answer. However, this was simply the position of the General Counsel, i.e., the opposing party. Respondent was free, of course, to disagree. Further, as noted above, *the Board's* decision was simply that the November 12 document was not intended as an answer. As discussed above, we now know that it was so intended. In sum, Respondent did not file a timely amended answer because there was no need for same. Its November 12 answer was, and is, perfectly adequate.[1]

In these circumstances, I find that the Respondent's November 12 document was a valid answer. I would therefore grant the Respondent's motion for reconsideration and I would deny General Counsel's Motion for Summary Judgment.

[4] *Stage Employees IATSE (Crossing Guard Productions)*, 316 NLRB 808 (1995), cited by the Respondent, is clearly distinguishable. In that case, the respondent's answer was filed only 2 days late, and the delay was a product of a misunderstanding between the respondent and the General Counsel. By contrast, in the instant case, the Respondent still has not submitted an amended answer months after the extended deadline.

[1] The Respondent contends in the alternative that even if the November 12 response was not a valid answer, it excusably failed to file an amended answer by December 30, 1998, because of business crises. In view of my position in this case, I need not, and do not, reach this issue.